

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1316

S.M.

vs.

E.T.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff obtained a G. L. c. 258E harassment prevention order, and an extension thereof, to protect himself and his family from the defendant, his neighbor. The defendant appeals, arguing that the extension order should be vacated because the plaintiff failed to prove at least three acts of harassment as required by the statute. We agree.¹

Background. The defendant is an autistic man residing in a group home. The plaintiff lives next door to the home with his wife and children. The plaintiff testified that on one occasion, the defendant was yelling outside at approximately 7:30 A.M. The plaintiff repeatedly told the defendant to "shut up." In response, the defendant charged toward the plaintiff, tried to bite him, and kicked him in the leg.

¹ We note that the plaintiff-appellee did not file a brief.

Discussion. As relevant here, harassment is defined as "[three] or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property." G. L. c. 258E, § 1. Harassing conduct that occurs "within a very short period of time" is considered to be one continuous act. Smith v. Mastalerz, 467 Mass. 1001, 1001 (2014).

The plaintiff's affidavit and testimony described only the incident detailed above. The plaintiff's wife referred to a second incident in which the defendant hit the plaintiff when the defendant "was fighting with his mother." Leaving aside that the plaintiff himself did not testify to having been hit on that occasion, it would be only the second incident of harassment, still one short of the required number. Also, an employee of the defendant's group home testified to an incident in which the defendant was in the home's back yard speaking repetitively and the plaintiff told the defendant to "shut the fuck up," came into the yard, and confronted the defendant. The plaintiff did not argue to the judge, nor does the evidence suggest, that this constituted harassment by the defendant of the plaintiff or of anyone else.

The defendant correctly argues that there was no evidence of three separate acts of harassment "aimed at" the plaintiff or

his family. The extension order, from which the defendant appeals, should not have issued.

Order entered May 29, 2018,
vacated.

By the Court (Henry, Sacks &
Ditkoff, JJ.²),

Joseph F. Stanton

Clerk

Entered: August 2, 2019.

² The panelists are listed in order of seniority.